

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	
And Competition Act of 1992	)	CS Docket No. 01-290
	)	
Development of Competition and Diversity	)	
In Video Programming and Distribution:	)	
Section 628(c)(5) of the Communications	)	
Act:	)	
	)	
Sunset of Exclusive Contract Prohibition	)	

**REPLY COMMENTS  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA) hereby submits its reply comments in the above-captioned Notice of Proposed Rulemaking.<sup>1</sup> NTCA is a national association representing the interests of more than 500 small and rural telephone companies.<sup>2</sup> NTCA members are full service telecommunications providers, providing local, wireless, Internet, satellite, long distance, and cable services to their rural communities.<sup>3</sup> NTCA supports those commenters who urge the Commission to extend the current prohibition against exclusive contracts for vertically integrated satellite cable

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<sup>1</sup> Notice of Proposed Rulemaking, FCC 01-307, rel. Oct. 18, 2001.

<sup>2</sup> All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996 (Act). 47 U.S.C. § 151 (37).

<sup>3</sup> Many of NTCA’s members will be directly affected by the outcome of this proceeding. NTCA’s members include multichannel video programming distributors that utilize a variety of technologies and network architectures. NTCA members are on the forefront of providing service using fiber to the curb, traditional hybrid fiber/coax and/or xDSL over copper pair.

programming and/or satellite broadcast programming beyond the October 5, 2002 sunset date.

**I. The Continued Prohibition Against Contracts Between Vertically Integrated Cable Operators and Video Programming Vendors Should Continue**

The Communications Act was amended in 1992 to prohibit exclusive contracts for satellite cable and satellite broadcast programming between vertically integrated programming vendors and cable operators in recognition that such a prohibition was necessary to preserve competition and diversity in distribution of video programming. Congress provided that the prohibition could sunset only if it was no longer necessary and there was sufficient competition in the marketplace. The level of competition envisioned by Congress in enacting the sunset provision has not yet been achieved. Cable continues to be the dominant MVPD and consolidation in the market has led to far fewer cable companies. Without the protection of section 628(c), large cable companies may abuse their market power to the detriment of competitors and small providers.

NTCA members are often the only providers of wired video services in their communities. They are also branching out and competing with entrenched cable providers in the neighboring more urban communities. These carriers require access to video programming to survive. Their continued viability is necessary to ensure the availability of video programming competition, particularly in rural areas often ignored by the large cable providers.

Congress enacted the sunset provision anticipating that ten years after enactment, competition in the video marketplace would be such that the prohibition would no longer be necessary. However, perhaps in recognition that their projections could be overly

optimistic, they permitted the ban to be extended if it is “necessary to preserve and protect competition and diversity in the distribution of video programming.” Smaller program providers are still gaining their foothold in the industry. There is not significant competition and the prohibition remains necessary to enable small providers to survive and compete.

## **II. The Current Prohibition Should be Expanded to Include all Exclusive Contracts Between Incumbent Cable Providers and Programming Vendors**

Access to video programming content is essential for the survival of smaller MPVDs. The ability or inability of a carrier to offer programming will determine whether or not subscribers sign up for service. While competition is limited in many rural areas, NTCA members seeking to provide video services have found it difficult to obtain access to programming. Exclusive contracts between affiliated providers and programmers are currently prohibited, but exclusive contracts between incumbent cable operators and unaffiliated program vendors continue to thwart rural carriers’ efforts to provide service. Since all exclusive contracts between incumbent cable operators and program vendors disadvantage small providers and new entrants, NTCA agrees with commenters who argue that the prohibition should be expanded.

### **III. Conclusion**

The exclusive contract prohibition of Section 628(c)(2)(D) should not be permitted to sunset. Congress gave the Commission the discretion to examine the status of competition in the video market before deciding to terminate the provision. Competition has been slow to emerge and cable operators are going through a period of consolidation. As such, the exclusive contract prohibition must survive to protect competition and the interests of small and rural providers.

Respectfully submitted,

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ASSOCIATION

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January 7, 2002

## CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telephone Cooperative Association in CS Docket No. 01-290, FCC 01-307 was served on this 7<sup>th</sup> of January 2002 by first-class, U.S. Mail, postage prepaid, to the following persons

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